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State of Utah

DEPARTMENT OF NATURAL RESOURCES

Division of Water Rights

MICHAEL R. STYLER JERRY D. OLDS
Executive Director *State Engineer/Division Director*

February 15, 2005

Cedar City Corporation
Attn: Engineering / Streets Departments
10 North Main Street
Cedar City, UT 84720

RE: OPERATION OF DIVERSION STRUCTURES ON COAL CREEK

To Whom It May Concern:

It has come to our attention that some misunderstandings may have developed regarding the regulation and operation of water diversions from Coal Creek. It has been reported that personnel employed by Cedar City Corporation have, on occasion, altered or interfered with the settings of a diversion structure by which water is diverted from Coal Creek. Reportedly, these activities have been intended to allow the use of irrigation ditches for storm water collection and transport.

The purpose of this letter is to inform you of pertinent regulations and, hopefully, to clear up any misunderstandings that might exist regarding the authority and proper procedures related to the operation of these structures.

Diversions of water from Coal Creek are regulated by the Utah State Engineer as part of the Cedar City Valley Distribution System. Mr. Sam Bauer has been appointed by the State Engineer as the commissioner for this system in accordance with §73-5-1, Utah Code Annotated, 1953, as amended. §§73-5-3 and 73-1-14 set forth the duties and delegated authority of the commissioner. These statutes state, in part:

The commissioner “. . .shall divide, or cause to be divided, the water . . . among the several appropriators entitled thereto in accordance with the right of each respectively, and shall regulate and control, or cause to be regulated and controlled, the use of such water by such closing or partial closing of the head gates. . .other controlling works of any ditch, canal, pipe, flume, well or tunnel or other means of diversion as will prevent the waste of water or its use in excess of the quantity to which any appropriator is lawfully entitled. . .”

“Any person, who in any way unlawfully interferes with, injures, destroys or removes any dam, head gate, weir, casing, valve, cap or other appliance for the diversion, apportionment, measurement or regulation of water, or who interferes with any person authorized to apportion water while in the discharge of his duties, is guilty of a misdemeanor, and is also liable in damages to any person injured by such unlawful act.”

As stated in the cited statutes, Mr. Bauer is responsible to divide the water among the several water users according to the rights of record. In fulfilling this responsibility, he is authorized to change and set headgates or instruct water users to change or set their headgates to assure an equitable distribution of water. Any party who tampers with or changes the structure under the regulation of the commissioner becomes liable for prosecution under the cited statutes. Also addressed in these statutes is an issue of potential liability the city may incur if the unauthorized use of these irrigation ditches for storm water collection and transport results in damage to or impairment of the functioning of the ditches.

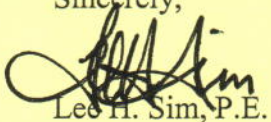
House Bill 38, currently before the legislature would change the penalty described in the above statutes. If the bill is passed into law, it will provide for a graduated penalty from a Class B Misdemeanor to a Third Class Felony depending upon the seriousness of the violation and whether or not it is a repeat offense.

As a water user under the Cedar Valley Distribution System, Cedar City is assessed each year to help pay the costs of the commissioner's salary and expenses in operating the system. The budget and assessments are set annually at a meeting with personnel of the State Engineer's office, the most recent having been held on February 9, 2005. Our records indicate there was no representative of the city in attendance. We encourage the city to have a representative at these meetings to receive information and to provide input related to the operation of the system.

While it is understood that the operation of or interference with the diversion works by city personnel may have been well intentioned, we believe it is important that such activities always be coordinated with and are under the direction of the duly appointed commissioner. If city personnel determine there is a need for such alterations of the diversion works, they should first contact Mr. Bauer at 586-4960 and follow his direction. If an emergency exists and Mr. Bauer cannot be reached, contact should be made with the Southwestern Region Office of the Division of Water Rights at 586-4231.

We are hopeful this letter will clarify the concerns of the commissioner and the affected water users. If there are any further questions, please contact me at (801)538-7380 or by e-mail at LEESIM@utah.gov, or you may contact the Southwestern Region Office at 586-4231 or by e-mail at kerrycarpenter@utah.gov. We thank you in advance for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee H. Sim".

Lee H. Sim, P.E.

Assistant State Engineer for Distribution

pc: Kerry Carpenter, Region Engineer
Sam Bauer, Commissioner
Brent Jones, Distribution System Chairman